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September 19, 2002

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**NOTICE OF EX PARTE  
COMMUNICATION**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

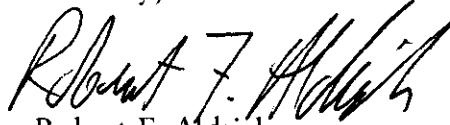
**Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Colorado Payphone Association Petition for Reconsideration re Retroactive Adjustment of Intermediate Period Compensation; Retroactive Adjustment of Interim Compensation**

Dear Ms. Dortch:

On September 12, 2002, Vince Sandusky, President of the American Public Communications Council ("APCC"), and Albert H. Kramer and Robert F. Aldrich, counsel for APCC had a meeting with Associate General Counsel Linda Kinney. We discussed the matters summarized in the enclosed document, entitled "Guide to Issues in Retroactive Payphone Compensation."

We also discussed the impact of recent interexchange carrier ("IXC") bankruptcies on the outcome of a compensation true-up for the Interim Period and/or Intermediate Period, under various possible scenarios. Enclosed is a copy of a table handed out at the meeting, entitled "Possible True-Up Outcomes for PSPs Represented by APCC Services, Inc." from which certain information subject to potential IXC claims of confidentiality has been redacted. An unredacted, copy of this table was submitted, with a request for confidential treatment, in APCC's ex parte letter dated July 25, 2002.

Sincerely,

  
Robert F. Aldrich

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Enclosures  
cc: Linda Kinney

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**AMERICAN PUBLIC COMMUNICATIONS COUNCIL**  
**GUIDE TO ISSUES IN RETROACTIVE PAYPHONE COMPENSATION**

**I. COMMISSION HAS DISCRETION REGARDING WHETHER AND HOW TO DO A TRUE-UP FOR EACH PERIOD**

**A. The Standard for Ordering a True-Up is Equity**

- Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 3-5 (April 15, 2002). Tab 3.
- Retroactive Adjustments of Compensation, Ex Parte Letter to Dorothy Attwood, Chief, FCC, from Albert H. Kramer and Robert F. Aldrich at 1-2 (April 23, 2001). Tab 4.

**B. The Court in *Illinois Public Telecommunications Association v. FCC* and *MCI Telecommunications Corp. v. FCC* Did Not Require a True-Up for Either the Interim or Intermediate Periods**

- FCC's Discretion Concerning Interim Period True-Up, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar (July 10, 2002). Tab 5.
- Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 3-5 (April 15, 2002). Tab 3.

**C. The Commission Can Resolve The True-Up Issue Differently for Differently Affected Groups of PSPs**

- Different Treatment of LECs and Independent PSPs, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar (July 10, 2002). Tab 6.
- Retroactive Adjustments of Compensation, Ex Parte Letter to Dorothy Attwood, Chief, FCC, from Albert H. Kramer and Robert F. Aldrich at 4-6 (April 23, 2001). Tab 4.

**II. INDEPENDENT PSPs SHOULD NOT BE SUBJECT TO A TRUE-UP FOR THE INTERMEDIATE OR INTERIM PERIODS**

**A. A True-Up Is Not Necessary to Prevent Unjust Enrichment of Independent PSPs or to Make IXCs Whole**

- 1. The IXC industry undercompensated the PSP industry more than \$80 million (more than \$135 million with interest) in the Early Period (1992 – 96) an amount that far exceeds any possible refund to IXCs.**
  - Early Period Compensation, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, Letter from Albert H. Kramer and Robert F. Aldrich at 5-9 (April 15, 2002). Tab 7.
- 2. No IXC has overpaid the independent PSPs—each of the major IXCs undercompensated independent PSPs for the Early Period by an amount greater than the maximum total refund the IXC would receive**
  - Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
- 3. Even without regard to the Early Period, the independent PSPs have been undercompensated, not overcompensated, for the Interim and Intermediate Periods combined**
  - Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
- 4. Independent PSPs did not recover the costs of their marginal payphones in the Intermediate Period**
  - Retroactive Adjustment of Interim Compensation, Ex Parte Letter to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, from Albert H. Kramer and Robert F. Aldrich (March 26, 2001). Tab 9.
- 5. The IXCs, including AT&T, have already recovered their payments from end users – the IXCs are not committed to passing refunds through to end users, and in any event, the end users that actually paid the higher rates will not receive refunds**
  - Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 9-12 (April 15, 2002). Tab 3.

**B. Subjecting Independent PSPs to a True-Up Inappropriately Forces Them to Bear an Unreasonable Risk of Loss**

**1. In the true-up currently planned, independent PSPs would be owed millions of dollars by IXCs currently at risk of bankruptcy, and would owe millions of dollars to AT&T**

- Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
- APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand, 10-14 (April 3, 2002). Tab 10.
- Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 5-6 (May 13, 2002). Tab 11.

**2. As independent PSPs have not been unjustly enriched, they should not be forced to pay Paul with money taken from Peter – especially when the chances of collecting from Peter are so uncertain.**

- Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 10 (May 23, 2002). Tab 8.
- APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand, 10-14 (April 3, 2002). Tab 10.
- Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 5-6 (May 13, 2002). Tab 11.

**C. Other equitable factors support excluding independent PSPs from the Intermediate Period refund requirement**

**1. Even AT&T, the only IXC to have overcompensated in the Interim Period, undercompensated independent PSPs if all three periods are considered simultaneously**

- Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 9 (May 23, 2002). Tab 8.

**2. Involving independent PSPs in a true-up will create an administrative nightmare and unfairly force independent PSP to bear the burden of errors.**

- Standards for Granting Retroactive True-Ups, Ex Parte Letter to William F. Caton, Acting Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich at 3-5 (April 15, 2002). Tab 3.

**III. IF INDEPENDENT PSPS ARE INCLUDED IN A TRUE-UP, WHETHER FOR THE INTERIM PERIOD ALONE OR FOR BOTH THE INTERIM AND INTERMEDIATE PERIODS, THE FOLLOWING PRINCIPLES SHOULD APPLY:**

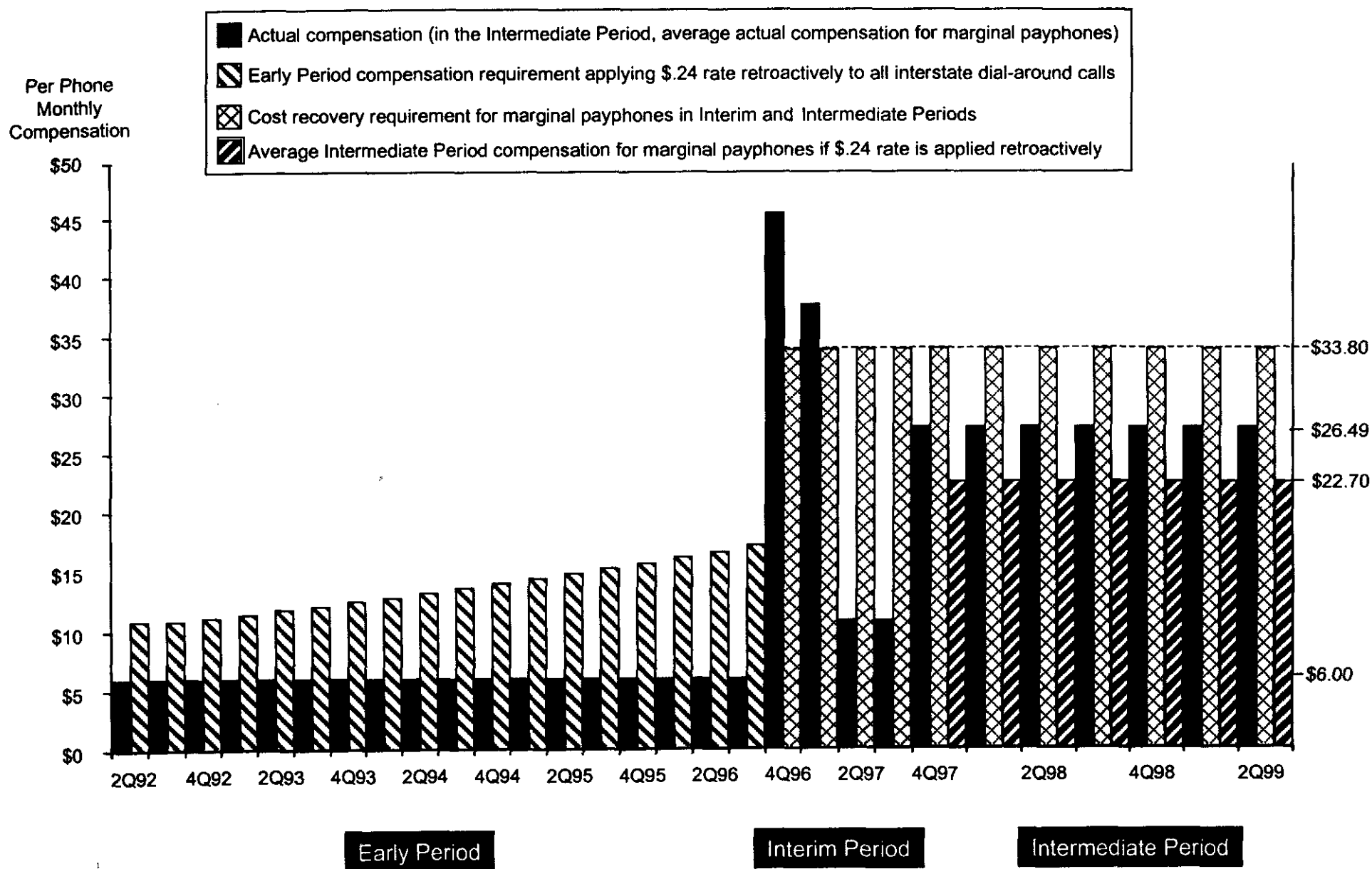
**A. The Commission should not require PSPs to act as intermediaries in transferring compensation payments from one IXC to another**

- APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 10-14 (April 3, 2002). Tab 10.
- Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 5-6 (May 13, 2002). Tab 11.
- Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 7 (May 23, 2002). Tab 8.

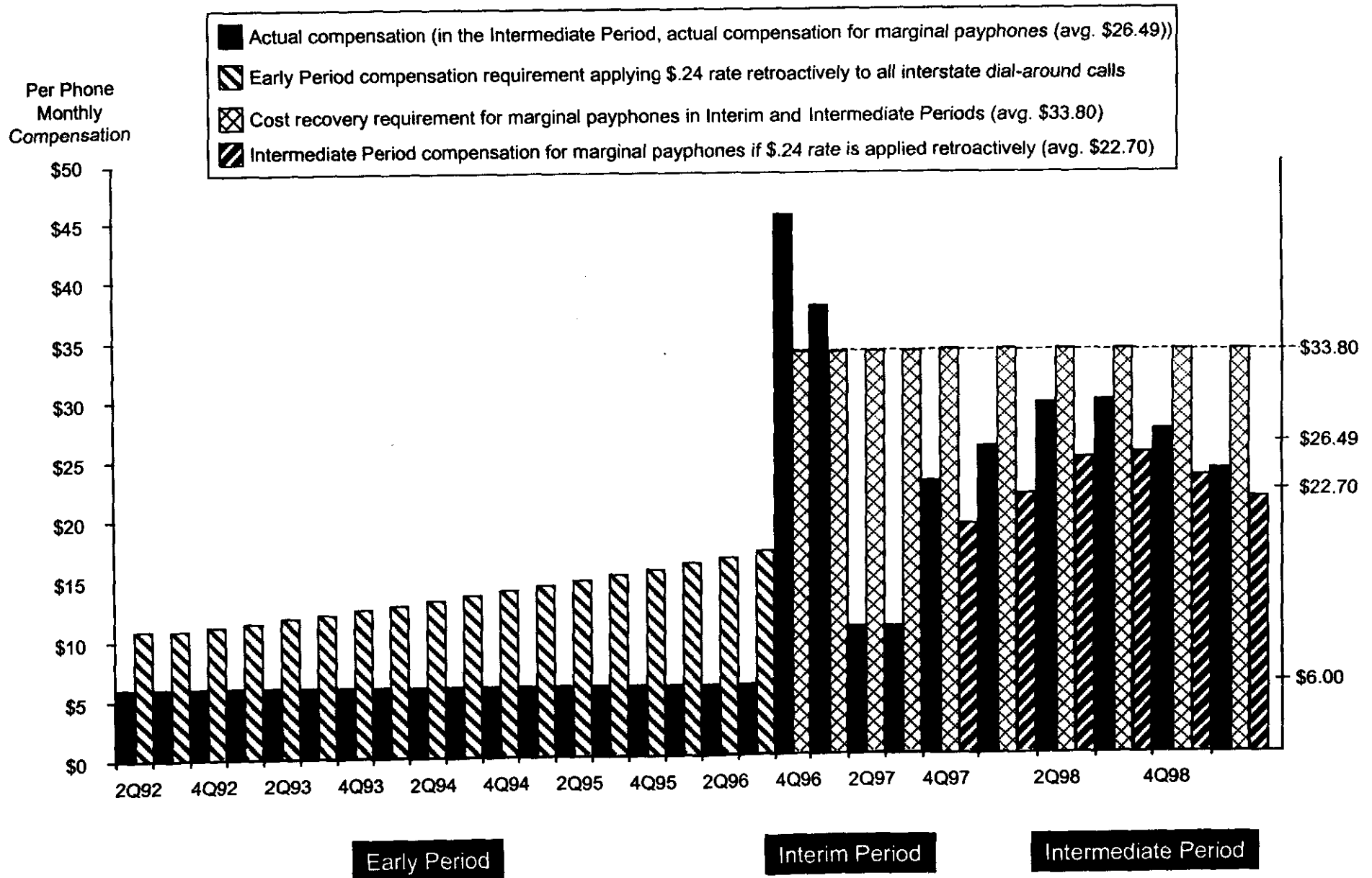
**B. The Commission should not permit IXC takebacks**

- APCC's Petition for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 16-18 (April 3, 2002). Tab 10.
- Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand at 6-8 (May 13, 2002). Tab 11.

# Independent PSP Compensation 1992-1999



# Independent PSP Compensation 1992-1999





# POSSIBLE TRUE-UP OUTCOMES FOR PSPS REPRESENTED BY APCC SERVICES

## 1. INTERIM ONLY (\$ M)

	"On Paper"	A	B	C	D	E
ATT	***	***	***	***	***	***
MCI/W	***	***	***	***	***	***
Sprint	***	***	***	***	***	***
Global	***	***	***	***	***	***
Qwest	***	***	***	***	***	***
C&W	***	***	***	***	***	***
Unknown	\$10.00	\$10.00	\$5.00	\$5.00	\$0.00	\$0.00
Total	\$47.75	***	***	***	***	(\$1.55)

## 2. INTERIM + INTERMEDIATE (\$ M)

	"On Paper"	A	B	C	D	E
ATT	***	***	***	***	***	***
MCI/W	***	***	***	***	***	***
Sprint	***	***	***	***	***	***
Global	***	***	***	***	***	***
Qwest	***	***	***	***	***	***
C&W	***	***	***	***	***	***
Unknown	\$8.00	\$8.00	\$3.00	\$3.00	(\$2.00)	(\$2.00)
Total	\$10.50	***	***	***	***	(\$27.04)

1. INTERIM ONLY = Independent PSPs included in true-up for the Interim Period only.

2. INTERIM & INTERMEDIATE = Independent PSPs included in true-up for both periods.

"On Paper" = Results of true-up if all IXC's pay/collect

A = MCI/W and Global don't pay, all other IXC's pay/collect

B = MCI/W, Global, and 50% of Unknowns don't pay, all other IXC's pay/collect

C = MCI/W, Global, Qwest, and 50% of Unknowns don't pay, all other IXC's pay/collect

D = MCI/W, Global, and 100% of Unknowns don't pay, all other IXC's pay/collect

E = MCI/W, Global, Qwest, and 100% of Unknowns don't pay, all other IXC's pay/collect

Amounts include interest to May 6, 2002.

"Unknown" includes roughly 7% of Interim Period traffic that is not clearly allocable to the six named IXC's, based on APCC's initial analysis of RBOC data.

All "Interim and Intermediate" scenarios assume that IXC's other than the six named IXC's receive a total of \$2 million in Intermediate Period refunds.